

Town of Amherst
Zoning Board of Appeals - Special Permit
DECISION

Applicant: Dan Marcantonio (for Subway)
4 Main Street, Amherst, MA 01002

Owner: Cook Block Associates, Inc.
P.O. 678, Amherst, MA 01004-678

Date Application filed with the Town Clerk: August 25, 2006

Nature of request: Petitioner seeks a Special Permit under Section 3.352.1 of the Zoning Bylaw to operate a Class II restaurant (Subway), open until 2 a.m., not serving alcohol.

Location of property: 4 Main Street, Map 14A, Parcel 53, B-G zone.

Legal notice: Published in the Daily Hampshire Gazette on August 30 and September 6, 2006, and sent to abutters on August 31, 2006.

Board members: Barbara Ford, Russ Frank and Hilda Greenbaum

Submissions:

The applicants submitted the following documents:

- A Management Plan;
- Photographs of the west façade of the building;
- A drawing of the proposed banner sign;
- Floor plans showing the conditions inside the restaurant, as renovated, dated December 29, 2005, revised March 7, 2006, prepared by Jeff Larrivee.

Town staff submitted the following documents:

- A sketch of two facades showing existing signs and square footage of signs;
- An email from Gail Weston to Christine Brestrup dated September 12, 2006, regarding closing hours of other restaurants in town;
- A memo from Jonathan Tucker, Planning Director, to Bonnie Weeks, Building Commissioner, undated, reporting on the Design Review Board meeting of Tuesday, September 12, 2006;
- A previously-issued Special Permit, ZBA FY91-53, issued to Peter MacConnell for Subway, in August of 1991.

Site Visit: September 11, 2006

At the site visit the Board was met by the applicant, Dan Marcantonio. The Board observed the following:

- The site is located at a busy crossroads in downtown Amherst;
- The building is located on a corner, with customer access through a door on Main Street;
- The building has large plate glass windows that look out onto the streetscape;
- The front door is used for customer access, take-out and for deliveries;
- The side door is located on North Pleasant Street; it is used for trash pick-up;

- There is a trash can near the Main Street entrance with the Subway logo on it;
- There are many signs, large and small, in the windows, including permanent vinyl stick-on signs, neon signs and signs advertising special sandwiches;
- The interior has a corridor leading from the main door to the counter;
- There are seats and tables inside as well as bathrooms for customers.

Public Hearing: September 14, 2006

At the public hearing Dan Marcantonio and Dick Pilchen, his business partner, presented the petition. Mr. Marcantonio referred to the Management Plan. Ms. Ford noted that the reason that Mr. Marcantonio was coming before the Board was that the previous Special Permit (ZBA FY91-53) contained a condition that read "This permit shall expire five years from the date of issuance or upon change of ownership or proprietorship."

The Special Permit (ZBA FY91-53) had not been renewed five years after being issued and the ownership of the business had changed. Mr. Marcantonio was asking to re-establish the hours of operation allowed in the previous Special Permit and he was proposing a new banner sign.

Mr. Marcantonio made the following comments:

- This is a new application for a Class II restaurant, with new hours and a new sign;
- He would like to keep the restaurant open until 2:00 a.m. to attract late-night customers and to give students and others more variety; he mentioned other establishments that are open until 2:00 a.m., referring to an email provided by town staff;
- He will conduct marketing and distribute flyers to the local bars to announce the new hours;
- The maximum number of employees on site at one time will be seven (7);
- There are 10 employees total; usually 3 or 4 are there at one time, with an average of 4 on site;
- Employees will arrive at 8:30 a.m. and the store will open at 9:30 a.m. to customers;
- There will be only two delivery distributors, Coke and Sysco; the Coke truck parks in front on Main Street, around 10:00 a.m. on Friday and unloads in about 15 minutes; Sysco deliveries will occur on Thursdays between 10:00 a.m. and noon; trucks will park on North Pleasant Street; deliveries will be made to the front door;
- The side door will be used only for garbage pick-up;
- Delivery Express takes deliveries to off-site customers for Subway; Delivery Express drivers park wherever they can find a parking space in the downtown area;
- There will be no breakfast foods served at this location;
- Seating includes 32 seats with no outdoor dining;
- No alcohol will be served;
- Music will be inside only and will consist of "Subway Radio"; it will not be heard outside;
- There are security cameras that can be viewed remotely from the manager's home;
- The on-site manager will control patrons gathering outside.

Mr. Pilchen made the following comments:

- He is Subway's oldest employee; he wants this store to be the best store in the chain;
- They have invested \$200,000 in renovating the store;
- This location provides a good opportunity to attract college students;
- The late hours will only be applicable on Thursday, Friday and Saturday nights;
- Orders will not be taken after 1:40 a.m. so that the restaurant can be cleared out by 2:00 a.m.;
- They wish to have the store open from 9:30 a.m. to 2:00 a.m., on Thursday, Friday and Saturday.

Mr. Marcantonio stated that he had met with Police Chief Sherpa and was told that Subway can hire an officer to stand outside the store when it is open late. Chief Sherpa told him that an officer stands near Antonio's and there are police officers driving by during the late night hours. Subway will either hire a police officer or have its own security guard to control the late-night crowd. Mr. Marcantonio also stated that he lives in Holyoke and can drive to the site in about 20 minutes in case there is a problem.

The Board inquired about equipment, odors and ventilation. Mr. Marcantonio stated that there will be no frying. Mr. Pilchen commented that Subway uses a "speed oven" to heat sandwiches and toast bread. They also bake bread. The ventilation will not change. They have new ovens but there is the same number of ovens as there were previously.

Ms. Ford stated that a condition of the permit, if it is granted, will be that the manager shall police the area along North Pleasant Street and Main Street for litter. She noted that there is a Subway garbage can in front of the store.

Ms. Ford asked about deliveries. Mr. Marcantonio stated that there will be deliveries from the restaurant until 2:00 a.m.

Mr. Frank asked about the "kiosk" that had been mentioned in discussions of the operation of the restaurant. Mr. Pilchen stated that the kiosk provides the opportunity for touch-screen ordering by customers.

Bonnie Weeks, Building Commissioner, made the following comments:

- There is seating for 32 patrons and there will be a maximum of 7 employees;
- This number of people (39) is acceptable; however, there may be a line of people waiting to be served;
- No more than 49 people will be allowed in the establishment; the manager will need to keep a "head count";
- The limited capacity is based on the fact that there is only one marked egress for use by the patrons;
- Ms. Weeks noted that there should be a manager on duty at all times to monitor the capacity and limit it to 49 people;
- If there are more than 49 people in the establishment the owner will receive severe fines from the Fire Marshall; these are mandatory fines.

Mr. Marcantonio noted that there is an exit at the rear of the kitchen that is open to the staff but not open to the public. Ms. Weeks stated that a public egress needs to have an access pathway that is 36" wide and the doorway itself needs to be 32" wide and marked. The Board stated that the applicant needs to have a plan to limit capacity.

The Board inquired about the applicant's plan for signs. Mr. Pilchen stated that the Subway store is not visible now, even though it is in the heart of the restaurant district. Subway wishes make itself more visible to attract new people, tourists and parents who are not aware of its location.

Ms. Greenbaum noted that the town has a sign bylaw that limits the square footage of signs on facades. Ms. Ford noted that signs that can be seen from the exterior count as exterior signs.

There was extensive discussion of the signs on both facades.

The Board reviewed copies of sketches that had been prepared by the Planning Department depicting the signs on both the Main Street and North Pleasant Street facades. They noted that the existing signs on the Main Street façade amount to about 16.5% of the façade and the existing signs on the North Pleasant Street side amount to about 9% of the façade. Adding the new banner sign without removing any of the existing signs would push the total sign area to about 10.7% on the North Pleasant Street facade.

The Board stated that the applicant would need to remove one advertising sign on the North Pleasant Street side in order to be able to install the banner sign, because the Bylaw states that no more than 10% of a façade shall be covered with signs.

By removing one 6 square foot advertising poster-sign from the North Pleasant Street side of the building and adding the banner sign the total sign area on the North Pleasant Street side will be about 10%. The Board did not ask the applicant to change the square footage of signs on the Main Street side since the applicant is not asking for any changes or additions to signs on that side.

There was discussion of the placement of the proposed banner sign. The Board reviewed and discussed the recommendations contained in the memorandum to Bonnie [Weeks], from Jonathan Tucker, undated, describing the recommendations of the Design Review Board with regard to the banner sign.

The Board asked about the hours of operation on nights when Subway will not be open until 2:00 a.m. Mr. Marcantonio stated that on Sunday through Wednesday Subway will be open from 8:30 a.m. for employees (9:30 a.m. for customers) until 11:30 p.m.

Ms. Ford stated that there should be a condition requiring that a security guard or police officer be on site between 11:30 p.m. and 2:00 a.m., specifically for crowd management, when Subway is open late.

Ms. Weeks stated that there should be a “counter” stationed at the door to count people in the establishment and to make sure that occupancy does not exceed 49 people.

Ms. Greenbaum stated that the signage at Subway is cluttered and overdone but that she would consider allowing it.

Ms. Greenbaum MOVED to close the evidentiary portion of the public hearing. Mr. Frank SECONDED the motion. The Board VOTED unanimously to close the evidentiary portion of the public hearing.

Public Meeting – Discussion

At the public meeting the Board discussed the conditions that they would impose if they granted the petition. The Board also discussed its findings.

Public Meeting – Findings:

Under Zoning Bylaw Section 10.38 the Board found that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood and is compatible with existing uses because the restaurant is located in the commercial center of town among other restaurants that have late-night hours.

- 10.382 and 10.385 – The proposal would not constitute a nuisance and reasonably protects the adjoining premises against detrimental or offensive uses on the site because conditions of the permit will be imposed to control noise, requiring that music be played inside only and that noise from music not exceed ambient noise levels at the street and there will be a security guard to control late night crowds. In addition, lights will be downcast.
- 10.383 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians because patrons will access the site on foot and deliveries will be limited by the conditions of the permit.
- 10.384 – Adequate and appropriate facilities would be provided for the proper operation of the proposed use because the restaurant has been operating in this location for many years and the conditions of the permit will control the management of the restaurant.
- 10.385 – The proposal reasonably protects the adjoining premises against detrimental or offensive uses on the site because conditions of the permit require that exterior lights be downcast, that the manager control trash and litter adjacent to the building, that a security guard be hired to control the crowds during late-night hours and that noise from music be limited to ambient noise levels only and that music shall not be played outside the restaurant.
- 10.386 - The proposal ensures that it is in conformance with the Parking and Sign regulations because the restaurant is located within the Municipal Parking Zone and therefore has no on-site parking requirements and the signs on the west façade will be limited to no more than 10% of the area of the façade.
- 10.388 - The proposal ensures adequate space for off-street loading and unloading of vehicles because deliveries will be limited by the Management Plan and by the condition of the permit and are also limited by Town Bylaws with respect to parking of trucks in the downtown area.
- 10.389 - The proposal provides adequate methods of disposal and /or storage for sewage, refuse, recyclables and other wastes because the building is connected with the town sewer system and refuse and recyclables are picked up 5 times per week by a local trucking company. There are no waste oils since there is no frying on the premises.
- 10.391 - The proposal protects, to the extent feasible, unique or important natural, historic or scenic features because the conditions of the permit limit the amount of signage allowed in this historic downtown area.
- 10.393 – The proposal provides protection of adjacent properties by minimizing the intrusion of lighting because no additional exterior lighting is proposed, the conditions of the permit require that any exterior lighting be downcast and any changes to exterior lighting shall be reviewed and approved by the Board at a public meeting.
- 10.395 - The proposal does not create disharmony with respect to the scale and architecture of existing buildings because the conditions of the permit limit the amount of signage allowed in this historic downtown area.
- 10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw for the reasons enumerated above.

Public Meeting – Zoning Board Decision

Ms. Greenbaum MOVED to approve the findings under Section 10.38. Mr. Frank SECONDED the motion. The Board VOTED unanimously to approve the findings under Section 10.38 of the Zoning Bylaw.

Ms. Greenbaum MOVED to approve the application with the conditions as drafted in the public meeting. Mr. Frank SECONDED the motion.

For all the reasons stated above the Board VOTED unanimously to grant a Special Permit with conditions, under Section 3.352.1 of the Zoning Bylaw, to operate a Class II restaurant (Subway), open until 2 a.m., as applied for by Dan Marcantonio, at 4 Main Street (Map 14A, Parcel 53, B-G Zone).

BARBARA FORD

HILDA GREENBAUM

RUSSELL FRANK

FILED THIS _____ day of _____, 2006 at _____,

in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2006.

NOTICE OF DECISION mailed this _____ day of _____, 2006
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2006,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit, under Section 3.352.1 of the Zoning Bylaw, to operate a Class II restaurant (Subway), open until 2:00 a.m., not serving alcohol, as applied for by Dan Marcantonio, at 4 Main Street (Map 14A, Parcel 53, B-G Zone), with the following conditions:

1. The restaurant shall be managed in accordance with the Management Plan, as revised, approved by the Board on September 14, 2006.
2. Music shall only be played within the building and the decibel level of any interior music audible outside the building shall not rise above the level of ambient noise at the property boundary.
3. There shall be a security person employed for crowd management, and to monitor capacity inside the restaurant, from 11:30 p.m. to 2:00 a.m., on Thursdays, Fridays and Saturdays.
4. The maximum capacity of the establishment shall be 49 persons, including patrons and employees.
5. No more than 7 employees shall be on the premises at one time.
6. The seating capacity shall be limited to 32 seats.
7. All exterior lighting shall be downcast.
8. The proposed banner sign shall be constructed and installed in accordance with the recommendations of the Design Review Board as expressed in a memorandum from the Planning Director to the Building Commissioner, reporting on the actions taken by the Design Review Board at its meeting on September 12, 2006, and in accordance with the photographic image annotated and approved by the Zoning Board on September 14, 2006.
9. Signs shall be limited to the existing, current sign area as displayed on sketches prepared by the Planning Department and approved by the Board on September 14, 2006, with the exception that in order to allow the installation of the proposed 18" x 72" banner sign, an existing 6 square foot advertising poster in the west window shall be removed and that west window shall thereafter be kept free of advertising posters or signs.
10. Additional changes or additions to lighting or signage shall be brought to the Board for review and approval at a public meeting.

11. The interior layout of the restaurant shall be as shown on the plans submitted with the application, showing the conditions inside the restaurant, as renovated, dated December 29, 2005, revised March 7, 2006, prepared by Jeff Larrivee. Cooking facilities shall be limited to the equipment shown on the plans submitted with the application and no external venting shall be added without prior approval of the Board at a public meeting.

12. Deliveries shall be conducted in accordance with the Management Plan as revised and approved by the Board on September 14, 2006.

13. The hours of operation shall be as follows:

Sunday through Wednesday	8:30 a.m. (for employees) to 11:30 p.m. 9:30 a.m. (for customers) to 11:30 p.m.
Thursday, Friday and Saturday	8:30 a.m. (for employees) to 2:00 a.m. 9:30 a.m. (for customers) to 2:00 a.m.

14. The manager on each shift shall be responsible for picking up trash in front of the Cook Block, north from Main Street along North Pleasant Street to the side doorway and east along Main Street from the Cook Block to the alley.

15. The name of the key-holder shall be on record with both the Police and Fire Departments.

16. Upon change of ownership or proprietorship the new owner or proprietor shall submit a new Management Plan to the Zoning Board of Appeals for review and approval at a public meeting.”

BARBARA FORD, Chair Pro Tem
Amherst Zoning Board of Appeals

DATE